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IN THE

SUPREME COURT OF THE UNITED STATES

No. 1049

OMAN CONSTRUCTION CO., INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION OF OMAN CONSTRUCTION CO., INC., FOR THE WRIT OF CERTIORARI

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THE OPINION BELOW

The Opinion sought to be reviewed in this Court is that of the United States Circuit Court of Appeals for the Sixth Circuit and since the Opinion was not reported, it will be found in the Appendix beginning at page A1. The Opinion of the Court was rendered in Civil Action No. 15,104 in a *supplementary* proceeding filed by the National Labor Relations Board as Petitioner, seeking to enforce a supplementary Order of the Labor Board, and the United States Circuit Court of Appeals rendered its Opinion in the *supplementary* proceeding on November 16, 1964.

JURISDICTION OF THIS COURT ON CERTIORARI

(a) The decree of the Court sought to be reviewed, and the time of its entry was November 16, 1964. The time for the filing of a Petition for the Writ of Certiorari in this cause was extended by an Order of this Court, on an Appellate Petition, to and including April 15, 1965. A copy of such Order so extending Petitioner's time will be found in the Appendix at page A4.

(b) The Statutory provisions believed to confer on this Court jurisdiction to review the judgment or decree in question, by the Writ of Certiorari, is 28 U.S.C. §1254, and is as follows:

> "1254. Courts of appeals; certiorari, appeal; certified questions
>
> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

* *

Petitioner realizes that the Writ of Certiorari is not a matter of right, and that the issuance of such a Writ rests in the sound discretion of this Court, but Petitioner avers that there are specific and important reasons for the issuance of the Writ in this case, they being:

The Court of Appeals has in this case rendered a decision which this Petitioner believes to be in conflict with other decisions of the Federal Appellate Courts and has decided an important question of Federal Law which has not been, but should be settled by this Court, and has decided a Federal question in a way in conflict with other ap-

plicable Federal decisions, and has so far departed from the acceptable course of judicial proceedings as to call for an exercise of this Court's power of supervision and final determination.

QUESTIONS PRESENTED FOR REVIEW

The important federal question presented for review in the terms of this particular case without unnecessary detail is whether or not the United States Circuit Court of Appeals has *supplementary* jurisdiction to enforce a supplementary Order of the National Labor Relations Board under applicable Federal Statutes where such Court has previously passed upon the enforcibility of a previous plenary final proceeding, and has entered a final Order thereon *without any remand* by the Court to the National Labor Relations Board for Supplementary Proceedings, and without any retention of jurisdiction in the Court with respect to said matters. It is Petitioner's view and insistence that the United States Circuit Court of Appeals is completely without jurisdiction, under the Federal Statutes, to hear and determine and undertake to enforce *supplementary proceedings* of the Labor Board without a prior remand for such further supplementary proceedings after the United States Circuit Court of Appeals has held a previous plenary hearing and rendered a final decree with respect to a prior decision of the National Labor Relations Board *relating to the same matters.*

THE FEDERAL STATUTES INVOLVED

Since the Federal Statutes are quite lengthy, they are merely cited herein as 29 U.S.C., §160(e) and (f) (U.S.C. §29), but said Statutes are set out in full in the Appendix at pages A4-A6.

BRIEF AND ARGUMENT

Conceding that the United States Court of Appeals has jurisdiction to review a final Order of the National Labor Relations Board, Appellant contends that said Court has no jurisdiction under the Statute to review a so-called *subsequent supplemental order* of the National Labor Relations Board, *without having previously remanded the cause to the National Labor Relations Board for further and additional or supplemental proceedings.*

In *Harper* v. *T. Housing Authority*, 197 Tenn., at page 265, Tomlinson, J., speaking for the Supreme Court of Tennessee, said:

> "However, we cannot, for the sake of expediency, take a jurisdiction not conferred on us."

The question of public importance in this case is whether an intermediate federal court ought to *take* jurisdiction as a matter of *expediency* where, in fact, the statute fails to grant such jurisdiction to the Court.

It is the duty of the Supreme Court (we believe), on this petition, to ascertain from the record, *as a matter of law*, whether the Circuit Court of Appeals for the Sixth Circuit could properly take jurisdiction on the *second* petition of the N.L.R.B. under the jurisdiction vested in said Court by the Act of Congress *without a previous remand to the Board for supplemental proceedings.*

Southern Hotel v. *Jones*, 177 U.S. 449;
Stratton v. *Ry. Co.*, 282 U.S. 10;
Aztec Mining Co. v. *Ripley*, 151 U.S. 79;
Spans v. *People*, 360 U.S. 315.

The Supreme Court of the United States is the *only* federal constitutional Court in the United States.

Article III, Sec. 1-2, Constitution of United States.

The jurisdiction of all other federal Courts, including that of the United States Court of Appeals for the Sixth Circuit, is fixed by Act of Congress.

Hodgson v. *Bowerbank*, 9 U. S. 303;
Venner v. *Great Northern Ry. Co.*, 209 U.S. 24;
Kline v. *Burke Const. Co.*, 260 U.S. 226.

The determination of this appeal, therefore, depends on the Constitution and the proper construction of the federal statutes, and the case may be said to arise under the Constitution and laws of the United States, and this petition therefore is proper, and should be granted.

Tennessee v. *Davis*, 100 U.S. 257;
Patton v. *Brady*, 184 U.S. 608;
U. S. v. *Coe*, 155 U.S. 76.

In terms of this particular case the record facts (which will disclose the question of law involved) appear in the per curiam opinion of the United States Court of Appeals for the Sixth Circuit, filed November 16, 1964, as follows:

"No. 15104

"UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

"National Labor Relations Board, Petitioner, vs. Oman Construction Co., Inc., Respondent.	On Motion of National Labor Relations Board for Entry of Supplemental Decree Specifying the Amount of Back Pay due under Court's Decree of April 22nd.

Denied November 16, 1964

"Before: Cecil and O'Sullivan, Circuit Judges, and Boyd, District Judge.

"Per Curiam. This cause is before the Court on motion of the petitioner, National Labor Relations Board, for entry of a supplemental decree specifying the amount of back pay due one William Nelson, under order of this Court of April 22, 1963, enforcing the order of petitioner against the respondent, Oman Construction Co., Inc.

"The response to the motion of the Board was a motion to dismiss the action for the reasons: 1. that this Court has no jurisdiction to issue a supplemental decree, and, 2. that if the Court has jurisdiction to issue a supplemental decree, the order of the Board should not be enforced because it is not supported by substantial evidence.

"By opinion of this Court, under date of April 22, 1963, reported at 316 F.2d 230, enforcement of the order of the National Labor Relations Board was granted. The opinion 'directed that the involved employee be

offered re-employment and made whole for lost wages, as a consequence of his layoff and respondent's refusal to reemploy him.' The involved employee was Nelson. A mandate was issued to the Board on the opinion and order of this Court on May 14, 1963. Subsequently, a hearing was had before an examiner. The finding of the examiner that Nelson was entitled to an award of back wages in the amount of $4772 was approved by the Board and an order was issued to that effect. This order is now before the Court for enforcement.

"The substance of the claim of counsel for the respondent on the question of jurisdiction is that, because this Court in its opinion did not specifically remand the case to the Board for the purpose of determining the amount of back wages due Nelson, the case was closed and jurisdiction was lost. Counsel claims that the employee's only relief is to bring a plenary suit against the respondent in a state court.

"There is no merit to the claims of counsel for the respondent. In *National Labor Relations Board* v. *Deena Artware, Inc.*, 198 F.2d 645, this Court granted an order of enforcement similar to one in the case now before us. The Board's Supplemental Decision and Order for the payment of back wages was enforced in that case by this Court in *National Labor Relations Board* v. *Deena Artware, Incorporated*, reported at 228 F.2d 871. See also *N.L.R.B.* v. *Royal Palm Ice Co.*, 201 F.2d 667, 668, C.A. 5; *N.L.R.B.* v. *Bird Machine Co.*, 174 F.2d 404, 405-406, C.A. 1; and *Home Beneficial Life Insurance Co.* v. *N.L.R.B.*, 172 F.2d 62, 63, C.A. 4."

Petitioner refers the Court to the Sixth Circuit's own previous decisions in *N.L.R.B.* v. *Hudson Motor Car Company* (June 22, 1943) 136 F.2d 335 and *N.L.R.B.* v. *Deena Artware*, 207 F.2d 798.

This Court (Petitioner believes) should also examine and consider its recent decision in *Retail Clerk International*

Association v. *Schermerhorn ea al.*, (Dec. 2, 1963) N. 13, October Term, 1963.

Petitioner's position is simply this: The jurisdiction of this Court to enforce a decision of N.L.R.B. is *purely statutory*, although Respondent fully recognizes the right of this Court upon the consideration of the Board's decisions, to remand the case back to the Board for further proceedings and Petitioner's position is that in the absence of such a remand the statutory jurisdiction of this Court to review and enforce a decision of the N.L.R.B. is exhausted by the exercise thereof, and the Board is without statutory authority to ask this Court to review and enforce a supplemental decision and order, particularly where the Respondent has fully complied with the Board's previous enforcement order except for a bona fide dispute as to the amount, if anything, due the employee in question.

It is believed that under these circumstances only individual rights of the parties in question are involved and that any relief presently available would be in a plenary suit brought by the employee in question against Petitioner (which has not been done) to enforce a right of recovery.

It is believed that the controlling principle, which supports petitioner's position, will be found in the above cited case of *N.L.R.B.* v. *Deena Artware*, 207 F.2d p. 801, from which we quote:

> "The Jurisdiction of this Court in the present proceeding is that conferred by Section 160 (e), Title 29 U.S.C.A. under which the Court is empowered to enter 'a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board,' together with the granting of such temporary relief or restraining order as it deems just and proper. That jurisdiction has been exercised by its order enforcing the decree, entered July 30, 1952, followed by the issuance of its mandate on October 7, 1952.

The *supplemental relief* now sought by the petitioner was applied for on April 9, 1953, based largely upon the assignments executed by the respondent on December 16, 1952, several months after this Court had entered its final order and disposed of the case. We are of the opinion that the issue presented by the present application is not one of which this court should take jurisdiction at the present time."

PRAYER

Your Petitioner therefore prays that the Supreme Court of the United States forthwith issue an order granting Petitioner the Writ of Certiorari directed to the Clerk of the United States Court of Appeals at Cincinnati, Ohio, for the purpose of reviewing and determining the legal federal questions involved herein and to enter such other and additional orders as may be required for a full review and oral argument after briefs have been filed with such notice or notices to the respondent as may be required, all to the end that this Court may determine the legal questions hereinabove set forth in the Petition.

This the ..... day of April, 1965.

OMAN CONSTRUCTION CO., INC.
Petitioner

By .....
Cecil Sims
Attorney